

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES ARTHUR BIGGINS,	§	
	§	No. 225, 2010
Plaintiff Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
CORRECTIONAL MEDICAL	§	
SERVICES, INC., et al.,	§	
	§	
Defendants Below,	§	C.A. No. N10C-03-277
Appellee.	§	

Submitted: July 16, 2010

Decided: September 2, 2010

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 2nd day of September 2010, upon consideration of the briefs of the parties and the Superior Court record it appears to the Court that:

(1) The appellant, James Arthur Biggins, filed this appeal from the New Castle County Superior Court's summary dismissal of his personal injury complaint.¹ We conclude that the dismissal of Biggins' complaint

¹ The caption on appeal reflects the caption used by the Superior Court.

was appropriate under the circumstances and affirm the Superior Court’s judgment.²

(2) By way of background, and as fairly reflected in the record in this case, Biggins is incarcerated at the James T. Vaughn Correctional Center serving a thirty-year sentence imposed in 1997. Biggins has chronic medical problems including sickle cell disease, scoliosis, migraines, acid reflux disease, back pain, and bleeding ulcers.³

(3) As a frequent but consistently unsuccessful *pro se* litigant,⁴ Biggins is subject to the “three strikes” provision of title 10, section 8804 of the Delaware Code.⁵ Pursuant to section 8804(f), Biggins was, and is, enjoined from seeking *in forma pauperis* (IFP) status unless he can demonstrate that he is “under imminent danger of serious physical injury at the time that the complaint is filed.”⁶

(4) In this case, Biggins sought IFP status in connection with his personal injury complaint filed on or about January 30, 2010. Biggins’

² The Court notes that the dismissal of Biggins’ Kent County Superior Court personal injury complaint was also recently affirmed. *Biggins v. Danberg*, 2010 WL 3310591 (Del. Supr.).

³ *See id.*

⁴ *See id.*

⁵ Del. Code Ann. tit. 10, § 8804 (1999 & Supp. 2008).

⁶ § 8804(f) (Supp. 2008).

complaint named sixty-five defendants⁷ and sought compensatory and punitive damages based on three causes of action brought under a variety of legal theories including medical negligence.⁸

(5) By undated order filed on March 30, 2010, the Superior Court summarily dismissed Biggins' complaint on the basis that it did not include a statutorily required affidavit and was "otherwise frivolous." By separate order dated March 29, 2010 and filed on March 31, 2010, the Superior Court denied Biggins' motion to proceed IFP.

(6) In his first argument on appeal, Biggins contends that the Superior Court erred when dismissing the complaint for his failure to file an "affidavit of merit." Biggins' argument is without merit. To the extent the complaint alleged medical negligence, the complaint was properly subject to the statutory requirements of title 18, section 6853 of the Delaware Code, which include the filing of an "affidavit of merit."⁹ The Superior Court concluded, and we agree, that Biggins' failure to submit an appropriate

⁷ The defendants included State officials, employees of the Department of Correction and employees of the Department's medical provider, Correctional Medical Systems, Inc.

⁸ The specific causes of action were (i) deliberate indifference to serious medical needs, (ii) "harassment and retaliation" for past institutional grievances, and (iii) ongoing and intentional failure to "supply adequate safe and proper food serving carts."

⁹ See Del. Code Ann. tit. 18, § 6853(a)(1) (Supp. 2008) (providing that a healthcare negligence complaint must be accompanied by an affidavit of merit).

affidavit or a motion to extend the time for filing an affidavit warranted dismissal of his medical negligence claims as a matter of law.¹⁰

(7) In his second argument on appeal, Biggins contends that the Superior Court erred when dismissing the complaint and denying him IFP status without first considering, under section 8804(f), whether he was in “imminent danger of serious physical injury at the time of filing.” On this point, Biggins is correct. It appears to the Court that the Superior Court neglected to make the “imminent danger” determination contemplated by section 8804(f).¹¹ Nonetheless, Biggins’ claim of reversible error is unavailing as this Court, in the interest of justice, has considered that determination *de novo* as part of this appeal.

(8) Having reviewed the parties’ briefs and the Superior Court record, the Court has concluded that neither the complaint nor the “sworn affidavit” accompanying the complaint supports a finding that Biggins was in “imminent danger of serious physical injury at the time of filing.”¹² Biggins, therefore, was statutorily precluded from proceeding IFP, and the

¹⁰ *Id.*; See *Hall v. Sorouri*, 2010 WL 2255048 (Del. Supr.) (citing *Burkhart v. Davies*, 602 A.2d 56 (Del. 1991)).

¹¹ See, e.g., *Biggins v. Danberg*, 2010 WL 3310591 (Del. Supr.) (affirming dismissal of complaint where order on appeal included express consideration and ruling on “imminent danger”).

¹² Biggins’ “sworn affidavit” broadly declares that “due to continual violations under the First, Eighth and Fourteenth Amendments,” his “living conditions place [him] in imminent danger of serious physical injury and substantial risks of health and safety.”

denial of his IFP status was correct. Moreover, under all the circumstances of this case, the Court cannot discern reversible error arising from the Superior Court's summary dismissal of Biggins' complaint.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice